IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2007

CORAM:

THE HONOURABLE MR. JUSTICE P.JYOTHIMANI
W.P.No.35919 of 2004
and
W.P.M.P.No.43225 of 2004
W.V.M.P.No.19 of 2005

S.Lakshmi
. . Petitioner

Vs.

1. The Chief Educational Officer,
Nagercoil.

2. The Director of School Education,
College Road,
Chennai.

3. The Head Master,
Government Higher Secondary School,
M.K.B.Nagar,
Vyasarpadi,
Chennai-39.

4. C.Seethalakshmi
. . Respondents

PRAYER: This Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records relating to the order of the first respondent dated 23.11.2004 issued in the Ref.No.Na.Ka.No.5680/A3/2000 and quash the same and further direct the respondents 1 to 3 to reinstate the petitioner as Sewing Mistress with all attendant benefits.

For Petitioner : Mr.K.Dhanalakshmi
For Respondents : Mr.P.Gopiraja, G.A.

WEB COPY

O R D E R

The writ petition is directed against the order of the first respondent dated 23.11.2004 by which the first respondent has cancelled the appointment of the petitioner as Sewing Mistress dated 07.03.2001.

https://hcservices.ecourts.gov.in/hcservices/

2. The case of the petitioner is that she has acquired Diploma in Costume Design and Dress Making and has registered in the Employment Exchange in the year 1991 and she has also registered her TTC qualification in the year 1993. On the basis of that, her name was sponsored by the Employment Exchange, the first respondent having found that the petitioner was qualified, has appointed the petitioner as Sewing Mistress by the order dated 07.03.2001 and the probation of the petitioner was also completed on 23.08.2003.

3. By the impugned order of the first respondent dated 23.11.2004, the said appointment order, was sought to be cancelled by the first respondent on the basis that on the date of consideration of the petitioner, namely, on 29.01.2001 for the appointment, the petitioner along with other 4 persons including the fourth respondent were considered on the basis that the candidates selected already, namely, the 4th respondent on 29.09.2000, did not turn up. The said list of 4 persons was directed to be considered without resorting to such a direction of the District Employment Exchange. By mistake, instead of appointing the fourth respondent as per the sponsorship already made on 29.12.2000, the second list dated 29.01.2001 was considered and the petitioner was appointed and the petitioner is working in the Tiruvallur District at Government Girls Higher Secondary School, Tiruvottiyur.

4. It is also stated that since the fourth respondent has approached the Tamil Nadu Administrative Tribunal by filing O.A.No.3017 of 2002, in which the Tribunal by an order dated 11.06.2000 has directed that the claim of the fourth respondent should be implemented within 3 months and it was on that basis the appointment of the petitioner was sought to be cancelled. The impugned order is challenged by the petitioner on many grounds including that as far as the petitioner is concerned, her name was sponsored by the Employment Exchange on a priority basis, since the petitioner has registered her name in the Employment Exchange on 01.05.1993, while the fourth respondent has registered her name on 28.11.1995 and therefore, even as per the employment seniority, the petitioner is senior.

5. It is also the case of the petitioner that when the 4 names including the name of the 4th respondent was sponsored, the first respondent being appointing authority has considered the relative merits and ability and on verification of records has appointed the petitioner, since she is senior even in the registration in the Employment Exchange, as early as in 2001 and that cannot be said to be an invalid appointment.

6. It is also the case of the petitioner that it is not as if the Tamil Nadu Administrative Tribunal has directed the first respondent to appoint the 4th respondent but there was only a direction to the first respondent to consider the appeal stated to have been filed by the 4th respondent. The petitioner also would submit that in fact the petitioner has submitted his explanation and in spite of it, the impugned order

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

proceeds on the basis as if the petitioner has not submitted any explanation.

7. On the other hand, it is categoric case of the petitioner in the affidavit filed in support of the writ petition that for the show-cause notice issued by the first respondent dated 01.03.2004, she has in fact submitted here explanation on 17.03.2004. The petitioner being a person belonging to SC community, she was considered on priority basis, apart from being Burma repatriates and therefore, her appointment was perfectly in order.

8. The learned counsel for the petitioner would also substantiate the same by saying that even a reference to the appointment order issued by the first respondent dated 07.03.2001 shows that the petitioner was given on a priority basis being belonging to Schedule Caste community and also Burma repatriates and therefore, it cannot be said to be invalid.

9. On the other hand, the learned Government Advocate would submit that it was as per the decision of the Tamil Nadu Administrative Tribunal in the application filed by the 4th respondent, when the matter was considered it came to limelight that the fourth respondent was already sponsored earlier in 2000 itself and by overlooking the same in 2001, the four persons were considered in which the petitioner was appointed and therefore, the appointment of the petitioner was found to be not in accordance with law and therefore, after giving show-cause notice to which the petitioner has submitted her explanation, the earlier order of appointment of the petitioner was cancelled.

10. I have heard the learned counsel for the petitioner as also the learned Government Advocate and perused the records.

11. A reference to the appointment order issued to the petitioner dated 07.03.2001 by the first respondent shows that the appointment order has been given to the petitioner as a Sewing Mistress and the said appointment was made to a regular vacancy and the petitioner belongs to not only Schedule Caste community but also on the basis of priority taking into consideration that she is a Burma repatriate, she was appointed. It is also seen that the probation of the petitioner has been declared by the order of the Chief Educational Officer, Tiruvallur dated 29.08.2003 and accordingly the petitioner has continued in service ever since from her date of appointment till date. A reference to the order of the Tamil Nadu Administrative Tribunal in O.A.No.3017 of 2002 dated 11.06.2002 shows that the 4th respondent has approached the Tribunal against the order of the Chief Educational Officer, Nagercoil, the first respondent herein dated 05.09.2001 and for a direction to appoint her as a Sewing Mistress in which the petitioner, who was appointed earlier to the filing of the said O.A. has not been made as a party. However, the Tribunal by the order dated 11.06.2002 has only directed the Director of School Education to dispose of the appeal preferred by the 4th respondent dated 13.09.2001

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

within a stipulated time. Therefore, the reference in the impugned order as if the Tribunal has directed the first respondent to implement the claim of the fourth respondent within a period of 3 months is a misnomer.

12. On the other hand, when a show-cause notice was issued by the Chief Educational Officer, Tiruvallur on 04.03.2004, the petitioner has in fact submitted her explanation on 17.03.2004 and this is also mentioned in the affidavit filed in support of the writ petition, which has not been denied by the respondents in the counter affidavit filed. It is seen that the 4th respondent has also received a notice in the writ petition as early as 04.03.2005 and has not chosen to appear before the Court. A reference to the impugned order also shows that while it may be true that in 2000 the 4th respondent was the person sponsored but in 2001 when the certificate verification were made, the Employment Exchange has admittedly send the names of 4 persons including the petitioner as well as the 4th respondent. Even as per the impugned order it is seen that the date of enrolment of the petitioner in the Employment Exchange was on 01.06.1992 while that of the 4th respondent is 28.11.1995. It was considering all the said 4 candidates, the first respondent has appointed the petitioner. In such circumstances, there is absolutely no question of any irregularity or illegality in the appointment of the petitioner. In any event when the petitioner was appointed as early as 2001 and it is not even the case of the respondents as if the petitioner has obtained the said order by illegal means and on the other hand, it is only on the relative merits and consideration of both the petitioner as well as the 4th respondent, the petitioner's appointment was made in 2001. The cancellation of the said order, even assuming the appointment was by the fault on the part of the first respondent, the same cannot be attributed to the petitioner as such.

13. In any event as I have stated that it is the specific case of the petitioner that she has made a reply to the show-cause notice as early as 17.03.2004 which has not been considered and therefore, I have no hesitation to come to the conclusion that the impugned order is unsustainable and suffers from the principles of natural justice.

14. It is seen that while admitting this writ petition in the order dated 07.12.2004 this court has given interim direction and it was subsequently extended from time to time, has and not been vacated so far. However, the learned counsel for the petitioner would submit that in spite of the order of interim direction the petitioner was relieved on 29.11.2004, which is not only against the order of the interim direction given by this Court but also as I have held the impugned order is not sustainable in law.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

15. In view of the same, the writ petition stands allowed, setting aside the impugned order of the first respondent dated 23.11.2004 and with a direction to the respondents 1 to 3 to permit the petitioner to continue to the Sewing Mistress in the third respondent's school. The respondents 1 to 3 shall pay a cost of Rs.3000 to the petitioner. Consequently, the connected W.P.M.P. And W.V.M.P. are closed.

nbj

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar.

To

1. The Chief Educational Officer,
   Nagercoil.

2. The Director of School Education,
   College Road,
   Chennai.

3. The Head Master,
   Government Higher Secondary School,
   M.K.B.Nagar,
   Vyasarpadi,
   Chennai-39.

- One cc to Govt Pleader SR 615
- One cc to Mrs. K. Dhanalakshmi, Advocate sR 280.

KSJ (co)
sg 10/01/07

order in
W.P.No.35919 of 2004

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/